

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RANDY JOHNSON,

Defendant.

Case No. 2:13-cr-00317-KJD-GWF

**FINDINGS &
RECOMMENDATION**

Motion to Suppress (#23)

This matter is before the Court on Defendant Randy Johnson's Motion to Suppress Evidence for Fourth Amendment Violation (#23), filed on October 28, 2013. The Government filed its Response in Opposition to Defendant's Motion (#27) on November 29, 2013. The Court initially scheduled an evidentiary hearing on Defendant's motion for December 5, 2013. The parties thereafter stipulated to several continuances of the evidentiary hearing which was eventually conducted on June 18 and July 30, 2014.

BACKGROUND

Defendant Randy Johnson is charged in a one count indictment filed on August 13, 2013 with possession of a controlled substance with intent to distribute in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii). *Indictment (#10)*. The indictment arises out of a highway patrol officer's traffic stop of Defendant's Johnson's rental vehicle on August 6, 2013, and the subsequent search of that vehicle during which methamphetamine was found in the trunk. Defendant argues that the vehicle search violated the Fourth Amendment and that the evidence resulting from the search should be suppressed.

...

1 **NHP Trooper Ervin Raab.**

2 The Government called Nevada Highway Patrol (NHP) Trooper Ervin Raab as a witness at
3 the evidentiary hearing. Trooper Raab has been employed by the NHP for approximately 18 years.
4 He has been assigned to the Nevada Interdiction Task Force (“Task Force”) for the past 3 years.
5 The Task Force is made up of members of Southern Nevada law enforcement agencies, including
6 the Nevada Highway Patrol, and the Las Vegas, Henderson and Mesquite, Nevada police
7 departments. Task Force officers patrol Interstate Highway 15 (“I-15”) which runs through Clark
8 County, Nevada and which is a major corridor for transporting illegal narcotics into the United
9 States from the southwest border. Task Force officers look for vehicles that are transporting large
10 amounts of narcotics or currency derived from drug trafficking. Trooper Raab has taken classes to
11 identify the behavior or characteristics of individuals engaged in drug trafficking and to identify
12 where narcotics and money may be hidden in vehicles. Trooper Raab patrols in a marked NHP
13 patrol car which is equipped with an audio-video recording system. The recording system is also
14 linked to a global positioning satellite (GPS) which gives a reading on the speed of the patrol
15 vehicle. While on patrol, Trooper Raab communicates by radio and cell-phone with other Task
16 Force officers, including officers equipped with narcotics detection dogs, i.e., K-9 units.

17 Trooper Raab testified that on August 6, 2013 at approximately 7:30 P.M. he was parked in
18 his patrol vehicle on the right shoulder of northbound I-15 near mile marker 55. The speed limit on
19 I-15 is 75 miles per hour. He testified that his attention was attracted to a blue Chrysler sedan
20 traveling in the No. 1 travel lane that was passing a “semi.” Trooper Raab proceeded to follow the
21 Chrysler and pace its speed. He did not recall how long he paced the Chrysler, but he determined
22 that it was traveling at 78 miles per hour. Trooper Raab testified that he has paced many vehicles
23 and received some field training on pacing early in his career. Trooper Raab’s patrol vehicle is
24 equipped with radar, but he does not use it because he is not very good at operating it and he does
25 not find it reliable.

26 Trooper Raab decided to stop the Chrysler for speeding. The audio-video recording system
27 was activated when he turned on the patrol car’s emergency lights to signal the Chrysler to stop.
28 The system records 30 seconds back from when it is activated. A DVD of the audio-video

1 recording was admitted into evidence as *Government's Exhibit 3*. Trooper Raab testified that he
2 later reviewed the GPS speed reading on the recording which showed that his vehicle was traveling
3 at 77 miles per hour prior to the stop.

4 The driver of the Chrysler pulled over to the side of the freeway and stopped near mile
5 marker 59 at 7:51:15 P.M. Trooper Raab exited his patrol car and approached the front passenger
6 side window of the Chrysler where he made contact with the driver, Randy Johnson, who was the
7 only occupant of the vehicle. Trooper Raab testified that Mr. Johnson appeared to be nervous. He
8 fumbled through his wallet for his driver's license and his hand trembled when he handed it to the
9 trooper. Trooper Raab testified that it is common for individuals to be nervous during a traffic stop,
10 but their nervousness usually dissipates during the course of the stop. He testified that Defendant
11 continued to be nervous throughout the stop. Trooper Raab also observed that Defendant's hands
12 and fingernails were dirty. Defendant later told him that he was a mechanic. Trooper Raab stated
13 that Defendant's appearance did not appear to "fit" the new rental vehicle he was driving. He also
14 testified that Defendant's facial characteristics were similar to those of a methamphetamine user--
15 sunken cheeks, pale skin, and dark rings under the eyes.

16 Trooper Raab testified that he told the Defendant he had stopped him for speeding and
17 Defendant responded that his cruise control was set at 75 mph. Mr. Johnson provided the trooper
18 with his license and a copy of a car rental agreement which showed that he rented the Chrysler from
19 Avis Car Rental in Burbank, California on August 6, 2013 at 11:36 A.M. The vehicle had a return
20 due date of August 13, 2013 at 11:00 A.M. at the same rental location. *See Government's Exhibit*
21 *2*.

22 The audio-video recording shows that upon making contact with the Defendant, Trooper
23 Raab asked him for his driver's license which Defendant provided. He then asked Mr. Johnson
24 where he was coming from. The Defendant stated California. Trooper Raab asked Defendant
25 where he was going. Defendant stated that he was going to Detroit, Michigan to visit some friends
26 and that he would be in Detroit for about a week. Trooper Raab told the Defendant that the reason
27 he stopped him was that the speed limit is 75 mph and he had him going "over 78." Defendant
28 somewhat excitedly responded "No way, I have this thing!"---apparently referring to the vehicle's

1 cruise control. Trooper Raab again asked the Defendant who he was going to see in Detroit.
2 Defendant answered friends. Trooper Raab asked what type of friends, and Defendant answered
3 that they were friends who used to live “out here,” but had moved back there. Trooper Raab then
4 asked Defendant what type of work he does. Defendant responded that he was in the junk removal
5 business. Trooper Raab asked Defendant where he rented the vehicle and he stated at the airport.

6 The recording shows that Trooper Raab next asked the Defendant if he had “ever been
7 arrested before.” Defendant responded yes and the trooper asked him “what for.” Defendant stated
8 that “back in the day” he had been arrested for all kinds of things such as petty theft. (Trooper Raab
9 testified that Defendant also stated that he had been arrested for burglary.) Trooper Raab asked
10 Defendant if there were any warrants for his arrest and Defendant said no. The trooper then stated
11 “I’ll be right back with you,” and appeared to be about to move away from the vehicle. It appears
12 that Defendant said something to the trooper and there was a brief, but unintelligible, verbal
13 exchange between them. Trooper Raab then asked Defendant if he had any marijuana,
14 methamphetamine, cocaine, heroin, guns, or knives. Defendant responded no to each question.
15 The trooper asked him if anyone had paid him to take anything across country. Defendant also
16 responded no. Trooper Raab told the Defendant that he would be right back and returned to his
17 patrol car at 7:54:20 P.M.

18 The audio-video recording shows that Trooper Raab remained at or near his patrol car until
19 8:16 P.M. During that period, Defendant remained inside the Chrysler. After leaving Defendant’s
20 vehicle, Trooper Raab turned off his body microphone. Because he was standing near the patrol
21 car, however, his cell phone conversations with another officer, Detective Sandoval, were picked up
22 by the vehicle’s microphone.

23 Trooper Raab testified that during his initial encounter with the Defendant, he appeared to
24 become more nervous and looked down and away when the trooper asked him if he had any
25 narcotics, guns or knives. Trooper Raab testified that California is a source state for illegal
26 narcotics coming across the border and that Detroit, as well as several other cities throughout the
27 central or Midwest section of the United States, are destination cities for illegal narcotics.

28 . . .

1 Trooper Raab testified that after returning to his patrol vehicle, he requested a records check
2 on the Defendant. He did not recall what time he requested the records check and did not record
3 this information in his arrest report. He testified that the response time for a records check varies
4 from dispatcher to dispatcher, but that the passage of 20 minutes before a response is received is not
5 abnormal. Trooper Raab also used his cell-phone to call Las Vegas Metropolitan Police
6 Department (LVMPD) Detective Adrian Sandoval to assist him with the stop. Detective Sandoval
7 operated as a K-9 unit and had a narcotics detection dog. Detective Sandoval told Trooper Raab
8 that he was busy, but that he would contact Detective Schaffner, another K-9 unit officer, to assist
9 Trooper Raab. Detective Sandoval called Trooper Raab back and told him that Detective Schaffner
10 was on the way.

11 Portions of the audio-video recording was played during the hearing. With the aid of the
12 recording, Trooper Raab testified that he placed a cell phone call to Detective Adrian Gonzalez at
13 7:57:51 P.M. He did not get through to Detective Gonzalez at that time. He radioed NHP dispatch
14 at 7:58:39 P.M. to request a records check on the Defendant. The NHP dispatcher was busy and
15 unable to immediately take the information for the records check. The dispatcher told him to stand
16 by. Detective Gonzalez called Trooper Raab back at 8:00:37 P.M. Trooper Raab made contact
17 with the NHP dispatcher at 8:01:06 P.M. and provided the records check information. At 8:04:30
18 P.M., Detective Gonzalez again called Trooper Raab and informed him that Detective Schaffner
19 would assist him. Trooper Raab contacted the "El Paso Intelligence Center" (EPIC) at 8:06:48
20 P.M. to run another records check on the Defendant. The recording indicates that at approximately
21 8:10:10 P.M. Trooper Raab thanked one of the officers who arrived on the scene for coming out.
22 Trooper Raab was unable to state whether this was Detective Schaffner or another NHP officer who
23 arrived on the scene. At 8:13:44 P.M. NHP dispatch provided the records check response to
24 Trooper Raab. Trooper Raab then summoned Defendant from his vehicle at 8:16 P.M.

25 Trooper Raab testified that when he calls for back-up, he routinely does this before he
26 requests a records check. He requested back-up by a K-9 officer in this instance because of his
27 suspicions about Mr. Johnson and his desire to conduct a dog sniff of the vehicle. Trooper Raab
28 testified that his suspicions were aroused by Mr. Johnson's nervousness, his story regarding the

1 purpose of his travel, that he was traveling from a “source state” to a “source city,” and the fact that
2 he was driving a rental car, although this latter fact was not overly significant. He stated that
3 narcotics traffickers sometimes use rental cars to distance themselves from ownership or possession
4 of the vehicle used to transport narcotics. Trooper Raab acknowledged on cross-examination,
5 however, that the Chrysler was rented in Mr. Johnson’s name.

6 Trooper Raab also testified about additional suspicious factors, including Defendant’s
7 physical appearance which did not match the vehicle he was driving and that his face had the
8 appearance of a possible methamphetamine user. He also testified that Defendant’s extensive
9 criminal record, including narcotics arrests or offenses, added to his suspicions. On cross-
10 examination, Trooper Raab acknowledged that he listed only the following suspicious factors in his arrest
11 report: (1) Defendant was nervous; (2) His stories of his travel were suspicious and confusing; (3)
12 He was traveling from a known source city, Los Angeles or Burbank, California; and (4) He was
13 traveling to a known source city, Detroit Michigan.¹ Trooper Raab acknowledged that he discussed
14 the other factors not mentioned in his report during his meeting with the prosecutor prior to the
15 hearing.

16 Trooper Raab testified that when Mr. Johnson came back to his patrol car at 8:16 P.M., he
17 still appeared to be nervous and was smoking a cigarette. Under some prompting by Government
18 counsel, Trooper Raab stated that in his opinion people smoke cigarettes to calm themselves.
19 Trooper Raab returned Mr. Johnson’s documents to him. He again asked Mr. Johnson about his
20 travel, where he was coming from, where he was going, who he was going to see and how long he
21 was going to be there. Defendant had originally told him he was going to Detroit for a week. He
22 asked the Defendant how long it was going to take him to drive to Detroit and Defendant said three
23 to three and one-half days. He pointed out to the Defendant that if it took him three days to drive to
24 Detroit and three days to return, he would only be there for one day. Defendant stated that he was
25 going to be there for a week. Trooper Raab asked him if he was going to drive or fly back.

26
27
28 ¹ Although Trooper Raab referred to Detroit as a “source” city, it appears that he intended to state
that Detroit is a “destination” city for controlled substances.

1 Defendant began to say something, but then paused, appeared to change his mind, and stated that he
2 was going to fly back. Trooper Raab testified that Defendant's statements regarding his travel
3 plans, including flying back from Detroit, were inconsistent with the car rental agreement that
4 required him to return the vehicle in California in one week.

5 Trooper Raab testified that he gave Defendant a verbal warning for the traffic infraction. He
6 then asked Defendant if he could speak to him a little bit more and Defendant said yes. He did not
7 tell Mr. Johnson he was free to leave. Nor did he tell Defendant that he could not leave or that he
8 was required to answer the trooper's questions. Defendant did not indicate a desire to leave and
9 was generally compliant with the trooper. Trooper Raab testified that he again asked Defendant if
10 he had anything illegal in the vehicle. He asked Defendant if he had marijuana, methamphetamine,
11 cocaine or heroin. Defendant responded no. He then asked Defendant if he could search the
12 vehicle. Defendant said no. Trooper Raab asked for consent again and Defendant again said no.
13 He asked Defendant why he would not consent. Defendant said his friends told him not to let the
14 cops do that.

15 Trooper Raab testified that after Defendant refused to consent to the search, Detective
16 Schaffner approached the Chrysler with the dog and did "a free air sniff" around the vehicle.
17 Trooper Raab engaged Mr. Johnson in conversation while Detective Schaffner and the dog moved
18 around the Chrysler. Detective Schaffner returned from the Chrysler and informed the Defendant
19 that the dog had alerted to the presence of narcotics in the vehicle. Defendant did not respond to
20 this statement. Trooper Raab directed Mr. Johnson to stand about fifty feet out in the desert while
21 the officers searched the Chrysler. While the officers were conducting the search, Defendant fled
22 into the desert. Mr. Johnson was apprehended and returned to the patrol vehicle. During the
23 search, the officers found approximately 9,000 grams of methamphetamine in the vehicle's trunk.
24 They also found marijuana and glass pipes in the console area of the passenger compartment.

25 The audio-video recording shows that upon being summoned from his vehicle by the
26 trooper, Mr. Johnson exited the Chrysler and walked rapidly to where Trooper Raab was standing at
27 the right front of the patrol vehicle. Trooper Raab's microphone was turned off when Mr. Johnson
28 came to him. Approximately the first twenty seconds of their contact cannot be heard. Trooper

1 Raab turned on his microphone and continued to speak with Defendant. The recording shows that
2 Defendant initially stated that he intended to stay a week in Detroit and that he had only recently
3 decided to fly back. He stated that the rental contract was for one week, but that he could call and
4 have it extended. He also stated that his travel plans might change depending on the mood of the
5 friends he was visiting. At that point (8:17:20-28 P.M.), Trooper Raab stated: "Like I said, I'm not
6 going to issue a citation or anything like that." He stated that as far as that was concerned, "we're
7 finished with that." Trooper Raab then stated: "Sir, would you mind if I asked any other
8 questions?" Defendant shrugged and said "Yeah," indicating a willingness to answer. Trooper
9 Raab then asked Defendant the litany of questions about narcotics in the vehicle. It appears from
10 the video that Defendant looked at the trooper as he answered no to each of these questions.

11 Trooper Raab then asked Defendant if he could search the car (8:17:48 P.M.). Defendant
12 said no. The trooper made a second request and Defendant said "No, because I'm not doing
13 anything illegal." Defendant stated that he usually gives officers permission to search, but that
14 friends or other persons had told him not to permit the police to search his vehicle. Defendant and
15 Trooper Raab then engaged in a 30 second discussion about that issue. As this discussion ended
16 (8:18:28 P.M.), Detective Schaffner and the narcotics dog passed by and approached the Chrysler.
17 Defendant can be heard saying "nice dog." Detective Schaffner and the narcotics dog moved
18 around the exterior of the Chrysler for approximately a minute and a half. (8:18:30 to 8:20:02
19 P.M.) As this took place, Trooper Raab continued to engage Defendant in a discussion about his
20 travel. He also asked Defendant if he had previously been stopped by the police. Defendant
21 indicated that he had been stopped by the police on "I-40." Trooper Raab also asked Defendant
22 about his business and previous employment. Defendant's demeanor during this part of the
23 encounter appeared relatively relaxed and conversational, notwithstanding the activity with the
24 narcotics dog occurring in front of him. Detective Schaffner then approached Defendant and
25 Trooper Raab and stated to the Defendant: "This is a narcotics dog. She alerted to your car."
26 (8:20:04 P.M.) He asked Defendant if he knew why she would do that. Defendant responded no.
27 Trooper Raab told the Defendant that the officers would be searching his car and directed him to a
28 location away from the vehicle.

1 **Detective Ray Schaffner.**

2 The Government called Las Vegas Metropolitan Police Department (LVMPD) Detective
3 Ray Schaffner as a witness during the evidentiary hearing. Detective Schaffner has been employed
4 by the LVMPD for twenty years. He has been a narcotics detective for twelve years and a narcotics
5 dog handler for nearly five years. Detective Schaffner testified that he and narcotics dog Sally were
6 trained together as a narcotics dog team and have worked together for the past five years. He
7 received 325 hours of training from a master trainer in the LVMPD canine section. Detective
8 Schaffner testified that Sally was trained to identify the odors of cocaine, methamphetamine,
9 marijuana and heroin. These odors are introduced to the dog over a period of time and the dog is
10 taught to alert to the odor of narcotics by being given a toy as an award each time she correctly
11 alerts. The dog is trained to identify the strongest point of the odor. As the handler, Detective
12 Schaffner's role is to identify behavior which shows that the dog is picking up the odor of a
13 controlled substance and to determine when the dog has given a final alert to the presence of an
14 odor of narcotics.

15 Detective Schaffner described the manner in which Sally alerts to the presence of narcotics.
16 Initially, there is a change in Sally's behavior. She closes her mouth so that she can sniff with her
17 nose more aggressively. Her movements become more precise as she tries to bracket the odor and
18 find its strongest source. When Sally finds the area of the strongest odor, she stops sniffing
19 aggressively, remains still and places her nose roughly an inch away from the source and stares
20 straight ahead. Detective Schaffner testified that there have been occasions in the field when Sally
21 alerted to the odor of narcotics, but none were found. On some of those occasions, individuals
22 admitted that they were previously smoking marijuana in the vehicle. On other occasions, officers
23 found hidden compartments in vehicles where narcotics may have previously been located.
24 Detective Schaffner drew a distinction between cuing the dog to the presence of narcotics in a
25 particular area during a field investigation, versus "presenting" the dog. He testified that as an
26 example of presenting, he will direct Sally to carefully sniff in the wheel well area of a vehicle
27 where narcotics are often found to make sure that she has fully explored that location for the odor of
28 narcotics. Detective Schaffner testified that in his five years working with Sally, he has found her

1 alerts to be reliable.

2 Detective Schaffner testified that on August 6, 2013, he went to the subject traffic stop in
3 response to a cell phone call from Trooper Raab who asked if he could assist with a stop and that he
4 needed a dog sniff. Detective Schaffner testified that when he arrived at the scene, Trooper Raab
5 had just asked the Defendant to exit his vehicle and walk back to the patrol vehicle. Detective
6 Schaffner testified that he was standing behind Trooper Raab, near the right front fender of his
7 patrol vehicle as the trooper was speaking to the Defendant. Detective Schaffner testified that he
8 moved forward to conduct the dog sniff immediately upon Defendant Johnson refusing Trooper
9 Raab's request for permission to search the vehicle.

10 Detective Schaffner testified that his standard practice in conducting a dog sniff of a vehicle
11 is to start at the rear bumper on the driver's side and work his way around the vehicle in a counter-
12 clockwise direction. In this case, Sally first showed a change of behavior at the rear bumper near
13 the trunk seam. She went up on her hind legs and sniffed the seam of the trunk aggressively. She
14 then dropped down and moved to the passenger side rear bumper area and went back up on her hind
15 legs and sniffed aggressively on the trunk seam near the taillight area where she gave her final alert
16 to the presence of a narcotics odor. Detective Schaffner testified that methamphetamine was
17 subsequently found inside the vehicle's trunk. Marijuana and narcotics paraphernalia, smoking
18 pipes, were also found in the passenger compartment of the vehicle. Although the audio/video
19 shows Sally standing on her hind legs at the passenger side window, Detective Schaffner testified
20 that she did not alert to this area. Sally's alert at the rear bumper of the vehicle is blocked from
21 camera view by Defendant Johnson's body. The audio/video recording, however, shows the dog
22 stopped for a few seconds at the rear bumper area on two or three occasions during the drug sniff.

23 Detective Schaffner testified that he and Sally are certified as a narcotics detection dog team
24 by the LVMPD and the California Narcotic Canine Association. They are re-certified twice per
25 year by the LVMPD and once per year by the California Association. Portions of the LVMPD
26 written policy or procedures relating to narcotics dog certification and training were admitted as
27 *Defendant's Exhibit E*. According to this document, the certification of a narcotics dog and the
28 handler is valid for six months from the date of certification. The certification official evaluates

1 whether the dog recognizes and alerts to the odor of narcotics and whether the handler recognizes
2 the dog's alert. The certification testing includes the placement of heroin, cocaine,
3 methamphetamine and marijuana in four building areas and in three vehicles. The maximum weight
4 of narcotics used in the testing may be unlimited, but a minimum of 14 grams of substance must be
5 used for each find. The narcotic finds must be placed in the search area for at least thirty minutes
6 prior to the first search team starting certification. If a detection teams fails to locate/indicate one
7 aide during the certification, they may be tested again that same day if the certification official rules
8 that the miss was the handler's error and requires no retraining of the dog. All other certification
9 errors require the team to reschedule another certification on a later date.

10 Detective Schaffner's/Sally's re-certification records were admitted as *Government's*
11 *Exhibit 6*. These records show that Detective Schaffner and Sally were re-certified by the LVMPD
12 on August 11, 2010, March 23, 2011, September 14, 2011, February 8, 2012, August 22, 2012 and
13 May 29, 2013. The LVMPD re-certification form is divided into two parts: vehicles and building
14 interior. On the May 29, 2013 re-certification form, the certifying officer checked the "pass" box
15 for the vehicle searches, but did not check the "pass" or "fail" box for the building interior section.
16 Detective Schaffner testified, however, he was told that he and Sally passed the re-certification test.
17 He also testified that if he and Sally had not passed both parts of the re-certification test, they would
18 have been required to retest. Detective Schaffner and Sally were also certified by the California
19 Narcotic Canine Association on October 23, 2009, October 22, 2010, October 21, 2011, October
20 18, 2012, and October 18, 2013. No testimony or other evidence was provided regarding this
21 association's certification protocol. Detective Schaffner's training history logs indicate, however,
22 that on the dates of the California certifications Sally located narcotics in different locations, which
23 suggests some form of testing similar to the LVMPD certification testing.

24 Detective Schaffner has also kept track of the number of alerts by Sally that have resulted in
25 the recovery of narcotics or currency. He testified that Sally has had 76 narcotics finds and 12
26 currency alerts that have resulted in the recovery of 300,610 grams of marijuana, 3,063 grams of
27 cocaine, 15,815 grams of methamphetamine, 3.7 grams of heroin, and \$622,620.00 in currency.
28 *Government's Exhibit 6*.

1 The LVMPD's written training policy or procedure states that training should be conducted
2 on a daily basis to ensure the unit's proficiency. It also states that whenever possible, a helper
3 should be utilized to plant the training aides to alleviate the possibility that the dog will respond to
4 the handler's scent, instead of the narcotics. *Defendant's Exhibit E*. The LVMPD maintains
5 training history records on the narcotics dogs which are created by the dog handler/officer. The
6 2012-2014 training history records for Sally are included in *Government's Exhibit 6*. The training
7 history records include the date and location of the training, whether a helper was used, the type and
8 weight of narcotics, and the location(s) where the narcotics were hidden. The time the narcotics
9 were sitting in the location before training started and the overall time for the training are also
10 listed.

11 Detective Schaffner testified that he tries to conduct training sessions with Sally three or
12 four times a week, but is not always able to do so because of other commitments. He also tries to
13 use a helper during training, but trains without a helper when none is available. Detective Schaffner
14 testified that it is important to use diversions, such as food, plastics, toys or other items during
15 training to ensure that the dog will not be diverted away from identifying narcotics. The training
16 history records between January 1, 2013 and August 6, 2013 show that Detective Schaffner
17 conducted training on 15 days in January, 10 days in February, 12 days in March, 14 days in April,
18 14 days in May, 15 days in June, 12 days in July, and 3 days during the first week of August prior to
19 the subject traffic stop on August 6, 2013. Of these 95 training days, a helper was used on 79 days.
20 The records indicate that diversions were used in only 8 training sessions during this period.
21 Overall, the records indicate that diversions were infrequently used during training sessions.
22 Detective Schaffner testified that Sally has never committed an alert error during training.

23 Detective Schaffner testified that he also included some actual deployment incidents in the
24 training records. He stated that this may include a training exercise at the scene where another
25 narcotics dog has already alerted to narcotics. Detective Schaffner included the subject August 6,
26 2013 incident in Sally's training records. He testified that after the narcotics were discovered in the
27 Defendant's vehicle, he redeployed Sally to the vehicle and had her re-alert to the presence of the
28 narcotics odor in the trunk. Detective Schaffner then gave Sally her toy for having correctly alerted

1 to the narcotics. This is confirmed by a review of the audio/video recording. Detective Schaffner
2 acknowledged that he arbitrarily indicated that the narcotics had been present in the location for 20
3 minutes prior to the training. He also reported that the training time was 10 minutes, even though
4 the actual time that Sally sniffed around Defendant's vehicle before alerting to narcotics was
5 approximately one minute and thirty seconds as shown on the audio/video recording.

6 **DISCUSSION**

7 **1. Validity of the Vehicle Stop.**

8 The Fourth Amendment to the United States Constitution protects the right of the people to
9 be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.
10 The Fourth Amendment further provides that no warrants shall issue, but upon probable cause,
11 supported by oath or affirmation. A police officer's conduct in stopping a motor vehicle for a
12 suspected traffic violation is a seizure within the meaning of the Fourth Amendment. *Delaware v.*
13 *Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 1396 (1979). Where the officer has reasonable suspicion
14 or probable cause to believe that a violation of traffic laws has occurred, he may stop and detain the
15 vehicle and its occupants to investigate the infraction. *Whren v. United States*, 517 U.S. 806, 809,
16 116 S.Ct. 1769 (1996); *United States v. Lopez Soto*, 205 F.3d 1101, 1104-5 (9th Cir. 2000). Trooper
17 Raab testified that he stopped Defendant's vehicle because it was traveling 78 miles per hour in a
18 75 mile per hour zone. The audio-video recording supports his testimony that Defendant's vehicle
19 was traveling two or three miles per hour over the speed limit. Although this may be viewed as a
20 minor speeding violation, it provided Trooper Raab with probable cause to stop the vehicle for
21 speeding. Therefore, the stop did not violate the Fourth Amendment.

22 **2. Whether the Duration of Defendant's Detention for the Traffic Stop** 23 **Violated the Fourth Amendment.**

24 During a routine traffic stop, a police officer may lawfully request the operator's drivers
25 license, vehicle registration and insurance information, run a records check on the driver and
26 vehicle, and issue a citation or warning. Questions regarding the driver's travel plans are
27 considered relevant to the traffic stop. *United States v. Diaz-Castaneda*, 494 F.3d 1146, 1153 n. 2
28 (9th Cir. 2007), citing *United States v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004) and *United*

1 *States v. Hill*, 195 F.3d 258, 268 (6th Cir. 1999). *See also United States v. Chavez-Valenzuela*, 268
2 F.3d 719, 724 n. 4 (9th Cir. 2001). The length and duration of the detention must be justified by the
3 circumstances authorizing its initiation. *Pierce v. Multnomah County, Or.*, 76 F.3d 1032, 1038 (9th
4 Cir. 1996).

5 Police officers may ask about matters unrelated to the purpose of the traffic stop so long as
6 their questions do not unnecessarily prolong the detention. *Arizona v. Johnson*, 555 U.S. 323, 333,
7 129 S.C. 781, 788 (2009) (“An officer’s inquiries into matters unrelated to the justification for the
8 traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as
9 the inquiries do not measurably extend the duration of the stop”). *See also Muehler v. Mena*, 544
10 U.S. 93, 101, 125 S.C. 1465, 1471 (2005) and *United States v. Mendez*, 476 F.3d 1077, 1080-81
11 (9th Cir. 2007). In *Illinois v. Caballes*, 543 U.S. 405, 408, 125 S.C. 834, 836-837 (2005), the
12 Supreme Court also held that officers may conduct a dog sniff of the exterior of an individual’s
13 vehicle for the presence of narcotics so long as the traffic stop is not unnecessarily prolonged by this
14 activity. If the officers develop reasonable suspicion during the traffic stop that the individual is
15 engaged in other criminal activity, then they may broaden the scope of their investigation and
16 reasonably extend the detention to investigate their suspicions. *United States v. Perez*, 37 F.3d 510,
17 513 (9th Cir. 1994) and *United States v. Baron*, 94 F.3d 1312, 1319 (9th Cir. 1996).

18 In *United States v. Turvin*, 517 F.3d 1097 (9th Cir. 2008), a state trooper stopped
19 defendant’s vehicle for traffic violations. The trooper was in his patrol vehicle writing out traffic
20 citations, when a second trooper arrived and informed him that a rolling methamphetamine
21 laboratory had been found in defendant’s vehicle a year earlier. The first trooper thereupon stopped
22 writing the citations, went to defendant’s vehicle and told him that he knew about the rolling
23 methamphetamine laboratory, which the defendant acknowledged. The trooper asked for consent to
24 search the vehicle, which the defendant granted. During the search, the troopers discovered an
25 illegal firearm and methamphetamine. In holding that the trooper did not unreasonably prolong the
26 traffic stop to investigate other possible criminal activity, the court noted that the total duration of
27 the stop up to defendant’s consent to the search was approximately fourteen minutes, which is not
28 unreasonably long for an ordinary traffic stop. *Turvin*, 517 F.3d at 1101-02. The court held that the

1 additional time expended to question defendant about narcotics and obtain his consent to search the
2 vehicle did not unreasonably prolong the traffic stop. The court further stated that officers are not
3 required to move at top speed when executing a lawful traffic stop. Quoting *United States v.*
4 *Hernandez*, 418 F.3d 12, 205, 1212 n. 7 (11th Cir. 2005), the court stated:

5 A traffic stop for speeding can doubtlessly last long enough for the
6 police to ask questions about the reasons for the speeding and to
7 conduct a variety of checks about licenses, registration, insurance and
8 so on. We underline that the police are not constitutionally required
9 to move at top speed or as fast as possible. For the police to be
10 vigilant about crime is, at least broadly speaking, a good thing. And
11 at a traffic stop, the police can occasionally pause for a moment to
12 take a breath, to think about what they have seen and heard, and to
13 ask a question or so. The police are authorized to detain traffic
14 violators for a *reasonable* amount of time.

15 *Turvin*, 517 F.3d at 1102.

16 The Fourth Circuit has stated that delays of one or two minutes caused by questions
17 unrelated to the purpose of the stop are *de minimis* intrusions that do not violate the Fourth
18 Amendment. *United States v. Mason*, 628 F.3d 123, 132 (4th Cir. 2010).

19 Other circuits have held that a brief extension of a traffic stop by a few minutes to conduct
20 and complete a dog sniff constitutes only a *de minimis* intrusion that does not violate the
21 defendant's Fourth Amendment rights. *United States v. McBride*, 635 F.3d 879, 883 (7th Cir.
22 2011); *United States v. Chaney*, 584 F.3d 20, 26 (1st Cir. 2009); *United States v. Alexander*, 448
23 F.3d 1014, 1017 (8th Cir. 2006); and *United States v. Mohamed*, 600 F.3d 1000, 1005-06 (8th Cir.
24 2010). In *Alexander*, the court held that a dog sniff of the vehicle which was completed within four
25 minutes after the officer told the driver that he would be given a warning ticket did not violate the
26 Fourth Amendment. In *Mohamed*, the court held that a dog sniff, which was completed within five
27 minutes after the traffic stop ended, did not unreasonably prolong the traffic stop. The officer had
28 also developed reasonable suspicion during the stop that defendant was engaged in other criminal
activity which also justified the extension of the stop.

In *State v. Beckman*, 305 P.3d 912, 129 Nev.Adv.Op. 51 (2013), however, the Nevada
Supreme Court held that an additional nine minute extension of the traffic stop in order to obtain a
dog sniff of defendant's vehicle violated the Fourth Amendment. The highway patrol trooper in

1 *Beckman* completed the traffic stop approximately nine minutes after he stopped defendant's
2 vehicle. After returning defendant's license and registration to him and indicating that he was free
3 to leave, the trooper asked defendant if he would be willing to answer a few questions. The
4 defendant agreed to do so. The trooper asked the defendant if he had anything illegal in the vehicle
5 and if he would consent to a search. The defendant stated that he did not have anything illegal, but
6 refused to consent to a search. At that point the trooper told the defendant he was not free to leave
7 and would have to wait for the K-9 unit to arrive to perform a sniff search. The K-9 unit arrived
8 approximately seven minutes later and the dog sniff was completed two minutes after that. In
9 holding that the delay of nine minutes was not *de minimis*, the Court noted that it doubled the length
10 of the traffic stop.

11 The duration of the traffic stop in this case was considerably longer than those in the above
12 cited cases. Approximately 25 minutes elapsed from the time Defendant's vehicle was stopped
13 until Trooper Raab informed Defendant that he would not issue him a citation for the speeding
14 violation. Detention for a traffic stop may not continue for an unreasonable time. As the Supreme
15 Court stated in *United States v. Sharpe*, 470 U.S. 675, 685, 105 S.Ct. 1568, 1575 (1985), "if an
16 investigative stop continues indefinitely, at some point it can no longer be justified as an
17 investigatory stop." The Court noted, however, that there is no rigid time limitation on *Terry* stops.
18 A traffic stop of 25 minutes, due in large part to the time waiting for a return on a records check,
19 does not, in and of itself, exceed the bounds of reasonableness.

20 Trooper Raab's initial contact with Defendant at his vehicle lasted approximately 2 minutes
21 and 20 seconds. Of that time, less than 30 seconds involved questions about narcotics or weapons.
22 It is clear from Trooper Raab's testimony that upon returning to his patrol vehicle, he intended to
23 obtain backup by a K-9 officer in order to conduct a dog sniff on Defendant's vehicle, and possibly
24 conduct a search for narcotics or other contraband. Instead of immediately requesting a records
25 check, Trooper Raab first attempted to contact Detective Gonzalez or another K-9 officer to provide
26 back-up. He did not contact NHP dispatch for a records check until approximately 4 minutes and
27 20 seconds after he returned to his patrol vehicle. The dispatcher initially placed Trooper Raab on
28 standby and did not get back to him for another 2 minutes to proceed with the request. The

1 dispatcher thereafter provided the records check information to Trooper Raab at 8:13:44 P.M. The
2 total time for the records check from when Trooper Raab first called dispatch was 15 minutes.
3 There is no evidence that the dispatcher delayed providing a return on the records check to
4 accommodate the arrival of the K-9 unit.

5 A little more than a minute passed after Trooper Raab received the results of the records
6 check until he summoned the Defendant from his vehicle. Trooper Raab spent another minute
7 again asking Defendant about his travel plans. He then told the Defendant that he was not going to
8 issue him a citation and that "we're finished with that." He asked Defendant if he would mind
9 answering additional questions. The Defendant agreed to do so. Although Trooper Raab did not
10 expressly tell Defendant he was free to leave, the audio-video recording supports the conclusion
11 that the ensuing encounter was consensual and that Defendant was no longer being detained. An
12 additional four minutes elapsed during which Trooper Raab asked Defendant additional questions,
13 requested his consent to search the vehicle, and Detective Schaffner conducted the dog sniff.
14 During that period, Defendant did not attempt to leave. Nor did he make any statement expressing
15 his desire to terminate the discussion with Trooper Raab.

16 The delay attributable to Trooper Raab's effort to obtain a dog sniff of the vehicle occurred
17 near the beginning of the traffic stop, rather than at its end. It is possible the traffic stop could have
18 been completed four to five minutes earlier if Trooper Raab had promptly requested a records
19 check. Any such conclusion, however, is speculative because it is unknown how soon dispatch
20 would have completed the records check if it had been requested earlier. Assuming that Trooper
21 Raab did not have reasonable suspicion to believe that Defendant was transporting narcotics, the
22 extension of the traffic stop caused by his effort to obtain back-up by a K-9 unit for a dog sniff is on
23 the borderline of reasonableness under the foregoing cases. Based on the totality of the
24 circumstances, however, the Court finds that this delay constituted no more than a *de minimis*
25 intrusion on Defendant Johnson's Fourth Amendment rights. In this regard, Defendant Johnson
26 made no effort to depart after he was informed that no citation would be issued. Instead, he agreed
27 to answer the trooper's questions and engaged in a fairly informal conversation with him for the
28 next several minutes. Unlike the trooper in *Beckman*, Trooper Raab did not tell Mr. Johnson that he

1 was not allowed to leave until the dog sniff was completed. It may be fair to say that Trooper Raab
2 distracted Mr. Johnson by further questions while Detective Schaffner conducted the dog sniff. Mr.
3 Johnson, however, neither objected to the dog sniff or nor expressed a desire to leave. The Court
4 therefore finds that the traffic stop was not unreasonably prolonged by Trooper Raab's effort to
5 obtain back-up by a K-9 officer so that a dog sniff of Defendant's vehicle could be conducted.

6
7 **3. Whether the Trooper Had Reasonable Suspicion to Believe that**
8 **Defendant Was Engaged in Other Criminal Activity.**

9 If Trooper Raab developed reasonable suspicion during the traffic stop to believe that
10 Defendant was transporting narcotics, then any additional time he spent investigating that suspicion
11 was reasonable and no Fourth Amendment violation occurred.

12 "[T]he Fourth Amendment is satisfied if the officer's action is supported by reasonable
13 suspicion to believe that criminal activity 'may be afoot.'" *United States v. Arvizu*, 534 U.S. 266,
14 273, 122 S.C. 744, 750 (2002), citing *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.C. 1581 (1989)
15 and *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.C. 1868 (1968). In determining whether an officer had
16 reasonable suspicion, the court must "look at the 'totality of the circumstances' of each case to see
17 whether the officer had a 'particularized and objective basis' for suspecting legal wrongdoing.
18 (internal citation omitted). This process allows officers to draw on their own experience and
19 specialized training to make inferences from and deductions about the cumulative information
20 available to them that 'might well elude an untrained person.'" *Id.* An officer's mere "hunch,
21 however, is insufficient to justify a stop or further detention. *Id.*, citing *Terry*, 392 U.S. at 27. The
22 Court in *Arvizu* rejected an approach in which the court evaluates and rejects individual factors in
23 isolation and fails to take into account the totality of the circumstances. The Court noted its
24 statement in *Terry* that while each of a series of acts was perhaps innocent in itself, taken together
25 they warranted further investigation. The court is not required to disregard a factor because there
26 may be an innocent explanation for suspect's behavior. *Id.*, 534 U.S. at 273-74, 122 S.C. at 751.

27 The courts have identified a variety of factors which taken together may provide a police
28 officer with reasonable suspicion to believe that the occupants of a motor vehicle are transporting
illegal narcotics or other contraband. These include an unusual degree of nervousness on the part of

1 the individual. *United States v. Perez*, 37 F.3d 510, 514 (9th Cir. 1994). However, even severe
2 nervousness, standing alone, does not provide reasonable suspicion. *United States v. Chavez-*
3 *Valenzuela*, 268 F.3d 719, 725-26 (9th Cir. 2001). Inconsistent, vague or evasive stories about
4 travel plans, such as who the individual is going to visit or where he intends to stay upon arrival, is
5 a factor; as is taking a long distance trip by automobile with only a short stay at the place of
6 destination. *United States v. Rojas-Millan*, 234 F.3d 464, 470 (9th Cir. 2000); *United States v.*
7 *Garcia*, 205 F.3d 1182, 1185 (9th Cir. 2000); *United States v. Baron*, 94 F.3d 1312, 1319 (9th Cir.
8 1996). The fact that neither the driver nor passenger is the registered owner of the vehicle, or the
9 vehicle is rented may also be factors. *United States v. Murrillo*, 255 F.3d 1169, 1174 (9th Cir.
10 2001). Traveling from a city known to be a source of narcotics to a city known to be a destination
11 hub for narcotics is also a factor. *Perez*, 37 F.3d at 514. An inconsistency between the suspect's
12 appearance and the nature of the work he performs can also contribute to a finding of reasonable
13 suspicion. *Id.*

14 Trooper Raab listed the following suspicious factors in the arrest report which he prepared
15 shortly after Defendant's arrest: Defendant was nervous. His travel story was suspicious and
16 confusing and he was traveling from a known narcotics source state to a known narcotics
17 destination city. During the hearing, Trooper Raab also testified that defendant's physical
18 appearance did not match the vehicle he was driving. His facial characteristics also indicated
19 possible methamphetamine use. Trooper Raab also indicated that the fact that the Chrysler was a
20 rental car was a factor. Trooper Raab also testified that the information regarding Defendant's prior
21 arrests or convictions for drug related offenses and other crimes contributed to his suspicion. The
22 Court gives less credence to these latter factors since they were not referenced by Trooper Raab in
23 the report he prepared shortly after the arrest. That said, it is probable that Trooper Raab would
24 have considered Defendant's prior criminal record in assessing the possibility that he was
25 transporting narcotics.

26 The information that Defendant provided regarding his travel plans was the most significant
27 factor supporting Trooper Raab's suspicions. Defendant initially told the trooper that he was
28 traveling from California to Detroit, Michigan to visit friends. When the trooper asked him what

1 friends, Defendant vaguely responded friends who used to live “here,” but now live there. The car
2 rental agreement provided for a one-week rental and for the return of the vehicle in California. The
3 stop occurred on the same day that Defendant rented the Chrysler. Given the travel time between
4 Southern California and Detroit, Defendant would have only been able to stay in Detroit one day, at
5 most, before driving back to California. Such travel is consistent with that of an illegal narcotics
6 courier. Defendant’s subsequent explanation regarding his travel also lacked credibility. He told
7 the trooper he planned to stay one week in Detroit and could call and extend the rental agreement.
8 If he was planning to stay a week in Detroit on the same day he rented the car, however, it did not
9 make sense to rent it for only one week. He also told the trooper that he had just decided to fly back
10 from Detroit, without explaining how he would return the rental vehicle. Defendant’s nervousness,
11 his conduct in looking down and away when the trooper initially asked him about the presence of
12 drugs, and the fact that he was traveling from a source state to a destination city for narcotics
13 provided further support for the trooper’s suspicions that Defendant was transporting narcotics or
14 illicit currency. The fact that Defendant had a significant prior criminal history also provided
15 additional support for the trooper’s suspicions.

16 Defendant argues that other factors which indicate that an individual is transporting
17 narcotics were absent in this case. There were no air fresheners or perfumes present which are
18 sometimes used to mask the odor of narcotics. There was no evidence that Defendant had two or
19 more cell phones which may be used to contact co-conspirators while the drug courier is on the
20 road. While the presence of such items would have strengthened a finding of reasonable suspicion,
21 their absence does not refute it. The Court finds that Trooper Raab had reasonable suspicion to
22 believe that Defendant was transporting illegal narcotics or illicit currency. He was therefore
23 justified in extending the duration of the stop as reasonably necessary to investigate this suspicion,
24 including making arrangements to have a K-9 officer come to the scene to conduct a narcotics dog
25 sniff.

26 **4. Whether the Dog Sniff Provided Probable Cause to Search the Vehicle.**

27 A positive alert to the presence of narcotics by a properly trained, certified and reliable
28 narcotics detection dog is sufficient to provide probable cause to search. *United States v.*

1 *Lingenfelter*, 997 F.32d 632, 639 (9th Cir. 1992). What constitutes sufficient evidence of a
2 narcotics dog's reliability was addressed by the Supreme Court in *Florida v. Harris*, --- U.S. ---,
3 133 S.C. 1050 (2013). The Court reversed a decision by the Florida Supreme Court which held that
4 the fact a narcotics dog has been trained and certified is not alone sufficient to establish probable
5 cause. The Florida court held that the state must present the dog's training and certification records,
6 an explanation of the meaning of the particular training and certification, field performance records,
7 including any unverified alerts, and evidence concerning the experience and training of the officer
8 handling the dog. The Florida court stressed the need for evidence of the dog's field performance
9 records, including how often the dog alerted without contraband being found. The Supreme Court
10 rejected the Florida court's use of a "strict evidentiary checklist" to establish the reliability of a
11 narcotics dog. The Court stated that the reliability of a narcotics dog, like other probable cause
12 questions, is to be determined based on the totality of the circumstances. *Id.* at 1055-1056.

13 The Supreme Court also criticized the Florida court's emphasis on the importance of records
14 regarding a narcotic dog's field performance. The Court noted that errors may abound in such
15 records. If a dog fails to alert to a car containing drugs, the mistake will usually go undetected
16 because the officers will not initiate a search. Conversely, a narcotics dog does not necessarily
17 make an error when it alerts to a car in which no narcotics are found. The dog may have detected
18 substances that were too well hidden to be found, or may have smelled the odor of drugs previously
19 in the vehicle or on the driver's person. *Id.* 133 S.C. at 1056. The Court stated:

20 By contrast, those inaccuracies---in either direction---do not taint
21 records of a dog's performance in standard training and certification
22 settings. There, the designers of an assessment know where the drugs
23 are hidden and where they are not---and so where a dog should alert
24 and where he should not. The better measure of a dog's reliability
25 thus comes away from the field in controlled testing environments.

26 For that reason, evidence of a dog's satisfactory performance in a
27 certification or training program can itself provide sufficient reason to
28 trust his alert. If a bona fide organization has certified a dog after
testing his reliability in a controlled setting, a court can presume
(subject to any conflicting evidence offered) that the dog's alert
provides probable cause to search. The same is true, even in the
absence of formal certification, if the dog has recently and
successfully completed a training program that evaluated his
proficiency in locating drugs. After all, law enforcement units have
their own strong incentive to use effective training and certification

1 programs, because only accurate drug-detection dogs enable officers
2 to locate contraband without incurring unnecessary risks or wasting
limited time and resources.

3 *Florida v. Harris*, 133 S.C. at 1057.

4 The defendant must be afforded the opportunity to challenge evidence of a dog's reliability,
5 whether by cross-examining the testifying officer or by introducing his own fact or expert
6 witnesses. The defendant may question the adequacy of a certification or training program, perhaps
7 by asserting that its standards are too lax or its methods faulty. *Id.* at 1057. Although the Supreme
8 Court discounted the overriding importance of field results, it noted that the dog's performance in
9 the field may also be relevant in determining its reliability. *Id.* Circumstances surrounding a
10 particular alert may also undermine the case for probable cause, such as if the officer cued the dog
11 consciously or not, or the team was working in unfamiliar conditions. *Id.* at 1058.

12 In *United States v. Thomas*, 726 F.3d 1086, 1096 (9th Cir. 2013), the Ninth Circuit
13 reiterated its statement in *United States v. Cedano-Arrellano*, 332 F.3d 568 (9th Cir. 2003) that a
14 defendant is entitled to obtain the narcotics dog handler's log, as well as training records and score
15 sheets, certification records and training standards and manuals in order to assess the reliability of
16 the narcotics detection dog. *Thomas* further states that "[e]vidence from a trained and reliable
17 handler about alert behavior he recognized in his dog can be the basis for probable cause. Whether
18 a particular dog displays enough signaling behavior will depend on the facts and circumstances of
19 each case." *Id.* at 1098.

20 The LVMPD certification records in this case show that Detective Schaffner and Sally were
21 re-certified by the LVMPD on a semi-annual basis. The LVMPD written policy and procedure also
22 provides information about the certification process which indicates its overall reliability. The May
23 29, 2013 re-certification for Detective Schaffner and Sally is open to some question, however,
24 because the certifying officer did not check the "pass" box for the building interior section.
25 Detective Schaffner testified, however, that he and Sally passed both sections of the re-certification
26 test. The Court finds his testimony to be credible in this regard. Detective Schaffner and Sally
27 were also certified on an annual basis by the California Narcotics Canine Association. No
28 information was provided, however, regarding nature of this association or its requirements for

1 certification. Due to the absence of such information, the Court gives little weight to the
2 certifications of this association.

3 Detective Schaffner's training records for Sally indicate that he conducted training on a
4 regular basis, although not as frequently as the LVMPD policy recommends. Detective Schaffner
5 rarely used diversions in the training and he included actual field deployments as training sessions
6 which casts some doubt on the sufficiency of the training. Detective Schaffner's testimony that
7 Sally has never committed an alert error during five years of training, while indicating a high level
8 of proficiency, could also suggest that the training regimen is lax. These doubts notwithstanding,
9 the evidence supports the conclusion that as of August 6, 2013, Detective Schaffner and Sally were
10 properly trained and certified as a narcotics detection team, such that Sally's alerts to the presence
11 of narcotics odor would support a finding of probable cause to search. Based on Detective
12 Schaffner's testimony, the Court also finds that Sally gave a reliable, positive alert to the presence
13 of narcotics in the trunk of Defendant Johnson's vehicle which provided probable cause to search
14 the vehicle.

15 CONCLUSION

16 The Court finds that Nevada Highway Patrol Trooper Raab did not unreasonably prolong
17 the traffic stop of Defendant Johnson in order to obtain a dog sniff of the vehicle. During the
18 course of the traffic stop, Trooper Raab also developed reasonable suspicion to believe that
19 Defendant Johnson might be transporting narcotics or other contraband, which justified an
20 extension of the traffic stop to obtain a dog sniff of the vehicle for the presence of narcotics.
21 Finally, the Court finds that Detective Schaffner and narcotics dog Sally were a reliable narcotics
22 detection team, such that Sally's alert to the presence of the odor of narcotics in the trunk of
23 Defendant's vehicle provided probable cause to search it. Accordingly,

24 ...

25 ...

26 ...

27 ...

28 ...

RECOMMENDATION

IT IS RECOMMENDED that Defendant's Motion to Suppress Evidence for Fourth Amendment Violation (#23) be **denied**.

DATED this 7th day of August, 2014.



GEORGE FOLEY, JR.
United States Magistrate Judge